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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,391	01/28/2004	Douglas Dombrowski	DP-311282	3331
22851	7590	10/06/2005	EXAMINER	
DELPHI TECHNOLOGIES, INC.			LUONG, VINH	
M/C 480-410-202			ART UNIT	
PO BOX 5052			PAPER NUMBER	
TROY, MI 48007			3682	

DATE MAILED: 10/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/766,391	Applicant(s) DOMBROWSKI ET AL.	
	Examiner Vinh T. Luong	Art Unit 3682	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

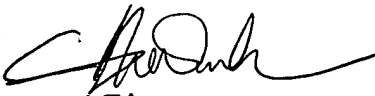
Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


Vinh T. Luong
Primary Examiner

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>Attachment</u> . |

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1. The Amendment filed on September 16, 2005 has been entered.
2. The Examiner *sua sponte* grants Applicant's request to withdraw the final rejection on July 15, 2005. The previous final rejection on July 15, 2005 is withdrawn and replaced by the instant final rejection.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Heling (US Patent No. 4,607,884).

Regarding claim 1, Heling teaches a two position, spring biased lever system comprising a lever 62 that pivots on a support 68 between a first position (Fig. 3 or 3A) and a second position (Fig. 4), and a spring 70 having an arm (unnumbered. See Attachment) that engages the lever 62 to hold the lever 62 in the first position and concurrently biases the lever 62 toward the second position.

Regarding claim 2, Heling teaches a two position, spring biased lever system comprising a lever 62 that pivots on a support 68 between a first position (Fig. 3 or 3A) and a second position (Fig. 4), said lever 62 comprising a notch 76, and a spring 70 having a spring arm (Att.) that engages the notch 76 in the lever 62 to hold the lever 62 in the first position while biasing the lever 62 toward the second position when the lever 62 is in the first position.

Regarding claim 3, Heling teaches a two position spring biased lever system comprising a lever 62 that pivots on a support 68 between a first position (Fig. 3 or 3A) and a second position (Fig. 4), said lever 62 having a notch 76, and a torsion spring 70 having a tangential spring arm (Att.) that is attached to a central coil (at 68 in Fig. 3) at one end and that has a distal

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end 74 engaged in a notch 76 of the lever 62, the torsion spring 70 being stressed so that the spring arm (Att.) holds the lever 62 in the first position when the distal end 74 is in the notch 76 while biasing the lever 62 toward the second position, the spring arm (Att.) moving the lever 62 to the second position when the distal end 74 is *partially* disengaged from the notch 76 (Fig. 4).

Claim 3 is anticipated by Heling because Heling's distal end 74 is *partially* disengaged from the notch 76 when the lever 62 is moved to the second position as seen in Fig. 4. On the other hand, Heling's distal end 74 of the spring arm is capable of being disengaged from the notch 76 if the user moves the seat back 14 forwardly as seen in Figs. 7-10 with a sufficient force. See *In re Schreiber*, 44 U.S.P.Q.2d 1429 (CAFC 1997)(A reference may be from an entirely different field of endeavor than that of the claimed invention or may be directed to an entirely different problem from the one addressed by the inventor, yet the reference will still anticipate if it explicitly or inherently discloses every limitation recited in the claims).

Regarding claim 4, the distal end 74 of the spring arm (Att.) when *partially* released from the notch 76 slides along a surface (Att.) of the lever 62 to bias the lever 62 to the second position.

Regarding claim 5, the distal end 74 of the spring arm 70 is a *substantially* perpendicular end portion of the spring arm (Att.), which when *partially* released from the notch 76 slides along a surface (Att.) of the lever 62 to bias the lever 62 to the second position.

Regarding claims 6 and 7, the spring arm (Att.) has a length L-1 (Att.) measured from its pivot to the distal end, wherein the lever has a length L-2 (Att. 2) measured from its pivot to the notch, and wherein the system has a length L-3 measured from the pivot of the spring arm to the pivot of the lever (L-3 = 0 because the pivot of the spring arm coincides with the pivot of the

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lever) and wherein the sum of the length L-1 and the length L-2 exceeds the length L-3 (which is equal to zero) when the lever is in the first position as seen in Fig. 3 or 3A.

5. Applicant's arguments filed September 16, 2005 have been fully considered but they are not persuasive.

Request to Withdraw Final Rejection

Applicant contends that the amendment of claim 2 in the Amendment filed on June 27, 2005 did not add an element that necessitated a further search, so as to justify final rejection. However, note that Applicant admitted in the Amendment filed on June 27, 2005 that “[c]laims 2 and 3 are amended to affirmatively recited that the lever includes a notch.” In other words, the notch was not positively claimed in original claim 2. Therefore, since amended claim 2 positively claims the notch, claim 2 did add an element that necessitated a further search, so as to justify final rejection. Notwithstanding this fact, the Examiner *sua sponte* withdraws the previous final rejection. In addition, the Examiner respectfully submits that: (a) Applicant had a fair opportunity to address the rejection based on Heling as seen on pages 2-5 of the instant Amendment; and (b) Applicant could have amended the claims in the instant Amendment, if Applicant so desired. Therefore, this Office action is a proper final rejection because there is no new ground of rejection that Applicant has not been accorded the fair opportunity to address in this Office action. See MPEP 706.07(a).

Claim Rejection over Heling

Applicant contended:

Heling shows a latch mechanism that utilizes a spring 70 to apply rotational force to a latch plate 62. The rejection points to the first position in Fig. 3 and the second position in Fig. 4. In the first position, the spring holds the plate in the first position, but

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does not apply bias to the plate in the direction of the second position, otherwise the plate would rotate toward the second position, since nothing in Heling stops such rotation. *In the second position, i.e., Fig. 4, the spring does not hold the plate in position.* Rather that is accomplished by pin 58, without which the bias of the spring would return the plate toward the first position in Fig. 3.

In contrast, in Applicants' invention, the spring not only holds the lever in the first position, but also, and at the same time, biases the lever toward the second position. To appreciate Applicants' invention, attention is directed to Fig. 4 in Heling and compared to Applicants' system in the first position (as opposed to the second position, as considered by the rejection). In Fig. 4, the plate is held in position, and the spring biases the plate toward the position in Fig. 3. However, the plate is held in the position in Fig. 4 by the spring bias, and without which the plate would move in pin 58, which counters the response to the bias. The spring in Applicants' invention performs the functions of both the spring and the pin in Heling - both holding and biasing the lever. (Emphasis added).

The Examiner respectfully submits that in the first position (Heling's Fig. 3), the spring 70 holds the plate in the first position, and does apply bias to the plate (lever) 62 in the direction of the second position (Fig. 4) because one end 74 of Heling's spring 70 is engaged with the notch 76 of the plate 62 as explained in col. 4, lines 1-29. In the second position, *i.e., Fig. 4*, the spring 70 does hold the lever 62 in position in combination with the pin 58 *in the same manner as Applicant's spring 116 which holds the lever 112 in combination with the down stop 138.* See Applicant's Fig. 4 and paragraph [0018] of Applicant's specification.

In Heling's invention, the spring 70 not only holds the lever 62 in the first position (Fig. 3), but also, and at the same time, biases the lever 62 toward the second position (Fig. 4) because two ends 72 and 74 of the torsional spring 70 are engaged with the support 66 and the lever 62 respectively in the same manner as two ends 124 and 126 of Applicant's spring 116.

To appreciate Heling's invention, attention is directed to Figs. 3 and 4 in Heling and compares Figs. 3 and 4 of Heling to Applicant's Figs. 2 and 4. In Fig. 3 of Heling, the lever 62 is held in the up position without the need of any stopper similarly to Applicant's lever 112 in Applicant's Fig. 2. In Fig. 4 of Heling, the lever 62 is held in the down position until it is stopped by the stopper 58 similar to Applicant's lever 112 which is stopped by the stopper 138 as described in paragraphs [0017] and [0018] of the specification. The plate 62 of Heling is held in the position in Fig. 4 by the spring bias, and since the other end 72 of the spring 70 is engaged with the support 66, the spring arm 70 both holds and bias the plate 62 toward the stopper 58 in the same manner as Applicant's spring 116. Applicant's analysis apparently overlooks Applicant's stopper 138 shown in Applicant's Fig. 4. In other words, the spring in Heling's invention performs the functions of both the spring and the down stop 138 in Applicant's invention.

Claim 1 is fully met by Heling because, in Fig. 3, the spring 70 holds the lever 62 with biasing force exerted by the end 74, and in Fig. 4, the spring 70 biases the lever 62 to pivot or move the lever 62 until the lever 62 is stopped by the pin 58. In the same manner, Applicant's Fig. 4 shows that the spring 116 biases the lever 122 to pivot or move the lever 112 until the lever 112 is stopped by the pin 138. In summary, claim 1 is anticipated by Heling because Heling teaches identical or substantially identical to Applicant's spring biased lever system.

Claim 2 is similarly anticipated by Heling because Heling's spring engages the notch 76 in the same manner as Applicant's spring 116 that engages with the notch 130. The function of Heling's notch 76 is to hold the plate 62 in position while applying bias to move it to the second position as described in col. 4, lines 1-54.

Claim 3 more particularly calls for a torsion spring with one end engaged in the notch. This feature is shown in Heling's Figs. 3 and 4. Applicant pointed out that the spring 70 of Heling is not capable to be disengaged from the notch 76.

Contrary to Applicant's remarks, Heling's distal end 74 is *partially* disengaged from the notch 76 when the lever 62 is moved to the second position as seen in Fig. 4. On the other hand, Heling's distal end 74 of the spring arm is capable of being disengaged from the notch 76 if the user moves the seat back 14 forwardly as seen in Figs. 7-10 with a sufficient force. See *In re Schreiber, supra*. In traveling between the extreme positions in Figs. 3 and 3A, since the arm of Heling's spring 70 is anchored by the pin 68, the pin 68 holds the spring 70 and contemplates that the spring 70 remains and returns to the notch 76. The assembly is not broken due to the elasticity of the spring 70. The spring is capable to hold or bias the plate 62 in the same manner as Applicant's spring. Therefore, Heling teaches or suggests Applicant's invention in claim 3. Moreover, the Examiner respectfully submits that a claim containing a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus if the prior art apparatus teaches all *structural* limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (BPAI 1987) and MPEP 2114. Since Heling teaches all structural limitations of claim 3, *a fortiori*, the functional limitation in claim 3 does not differentiate the spring system from the one of Heling.

With respect to claims 4 and 5, Heling's spring 70 slides or is capable to slide along a surface outside the notch if the user moves the seat back 14 forwardly as seen in Figs. 7-10 with a sufficient force. As explained above, the pin 68 holds the spring 70 and contemplates that the spring 70 remains and returns to the notch 76.

Claims 6 and 7 are rejected for the same reasons set forth in claims 3-5.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

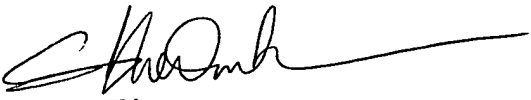
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinh T. Luong whose telephone number is 571-272-7109. The examiner can normally be reached on Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on 571-272-6917. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

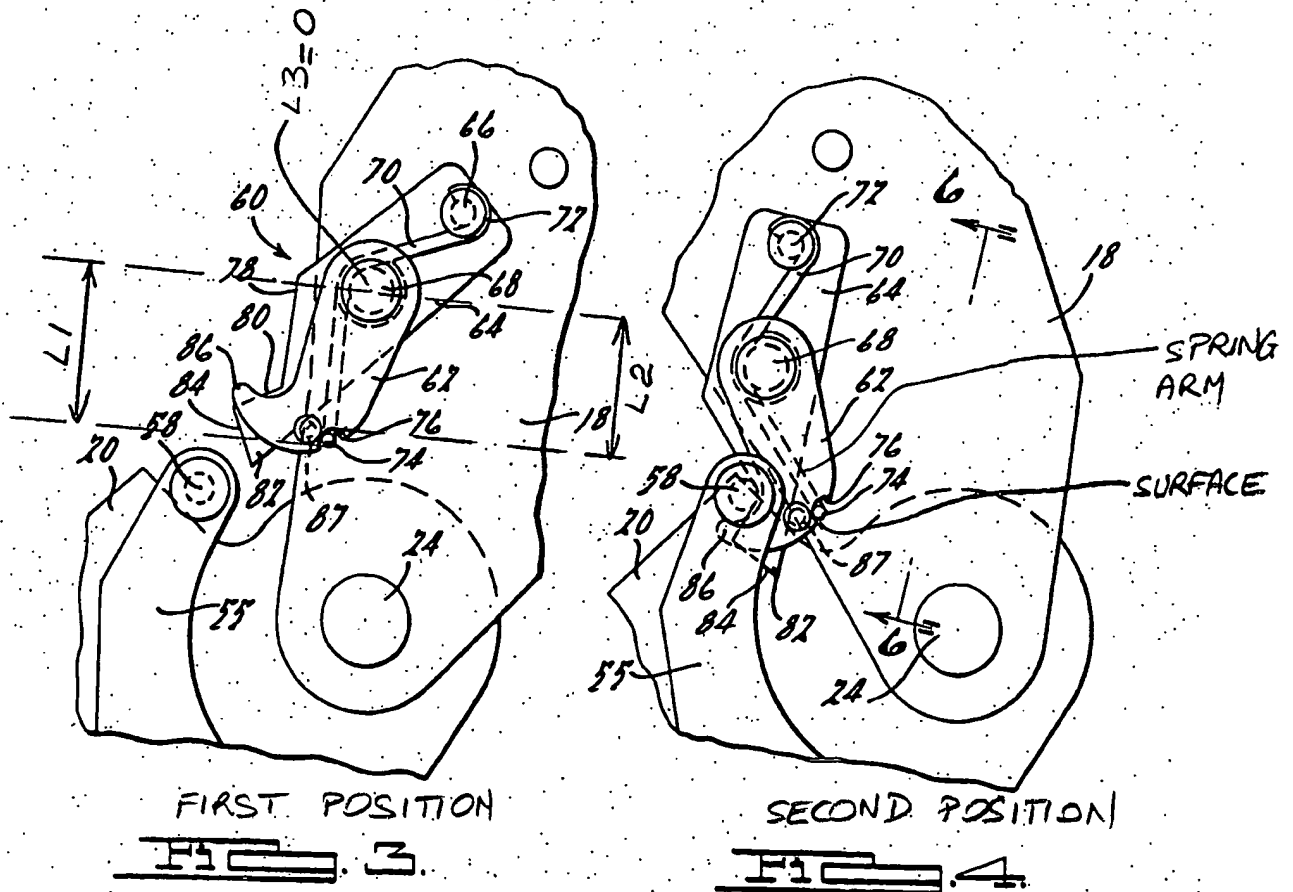
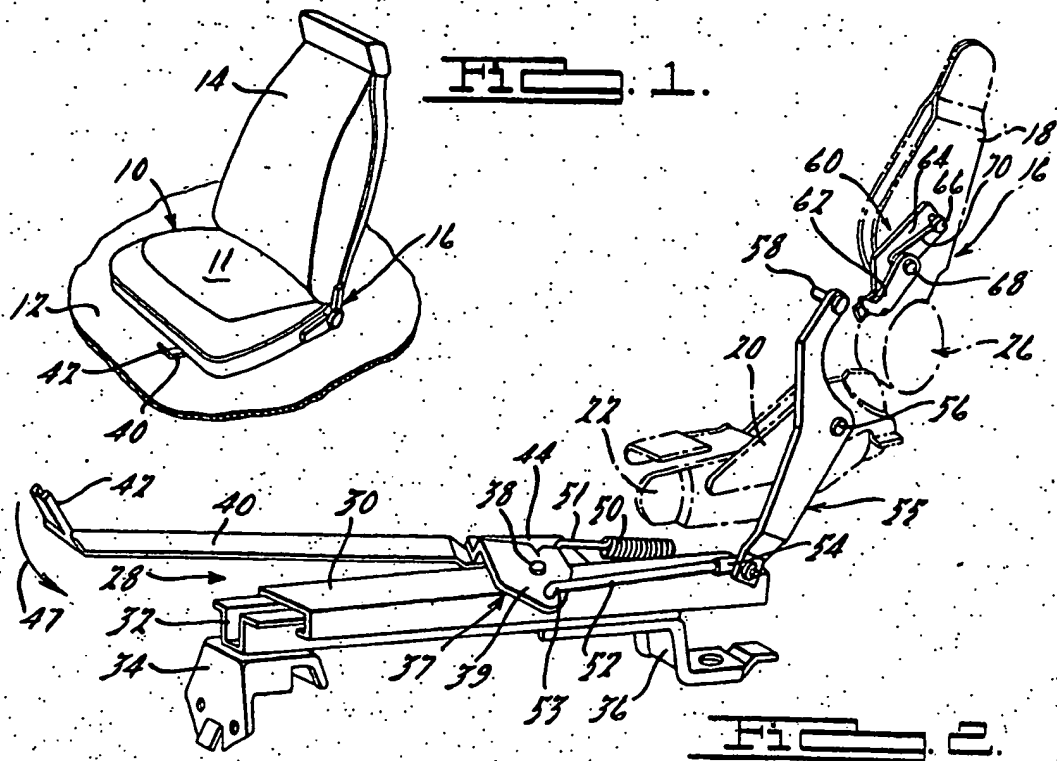
Luong

October 3, 2005



Vinh T. Luong
Primary Examiner

ATTACHMENT



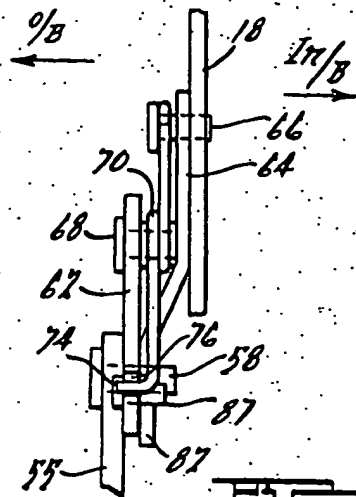


FIG. 2.

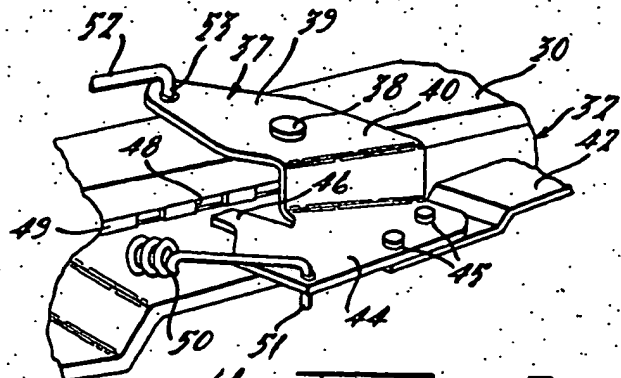


FIG. 5.

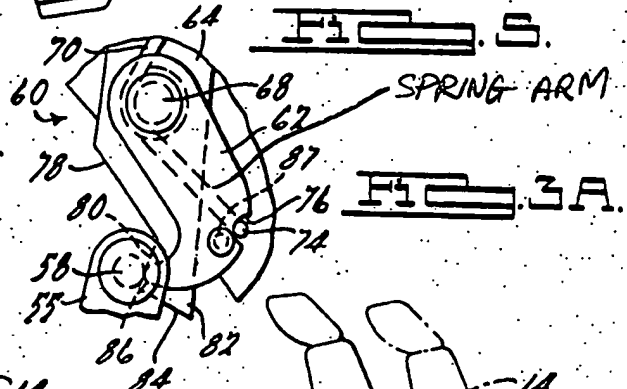


FIG. 3A.

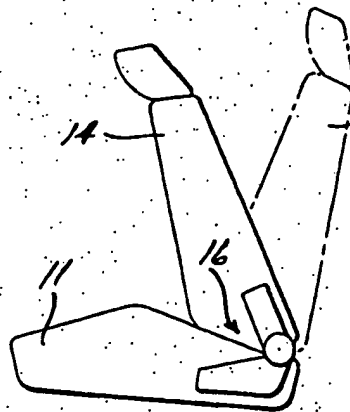


FIG. 7.

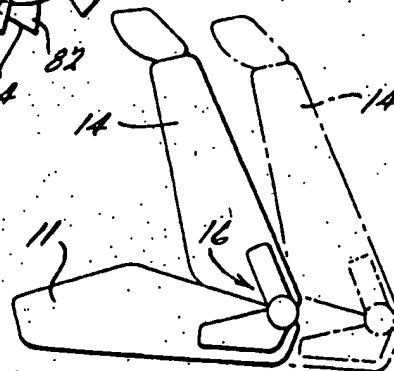


FIG. 8.

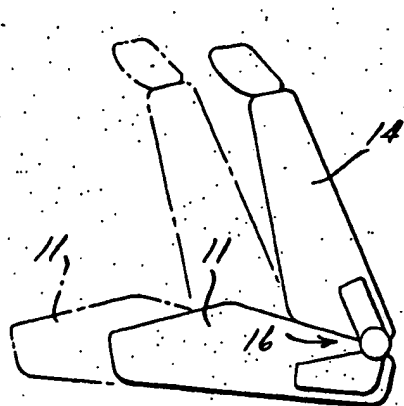


FIG. 9.

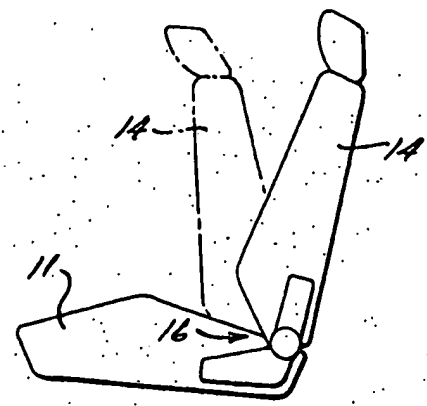


FIG. 10.